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No. 90-272

In The

Supreme Court of the United States

October Term, 1990

TYRONE BROOKS, LANETT STANLEY, BILLY McKINNEY, JOE BEASLEY, VENUS E. HOLMES, MICHAEL ROBINSON, EDWARD BROWN, REV. DR. WILLIAM HOWELL, JOHN WHITE, MARY YOUNG-CUMMINGS, MARY BLACK, WILLIE MAYS, WILLIAM YOUNG, DEANIE FRAZIER, DIANE HARVEY-JOHNSON, REV. G.L. AVERY, JUANITA T. WILLIAMS, PATRICIA C. JONES, EDITH INGRAM GRANT, HENRY COOK, ANNIE SMITH, and ERCEL BALDWIN,

Appellants,

versus

GEORGIA STATE BOARD OF ELECTIONS and MAX CLELAND, Secretary of State and Chairman of the Georgia State Board of Elections,

Appellees.

On Appeal From The United States District Court For The Southern District Of Georgia

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees hereby move that the instant appeal be dismissed or that the District Court order be affirmed insofar as it relates to the issue of relief.

In making this motion, appellees note that they have taken an appeal from the District Court's judgment in this action, and that appeal has been docketed in this Court as Case No. 90-332. A decision by this Court in favor of the appellants there (the present appellees) would render moot the instant appeal.

The grounds of the present motion, to the extent that this Court finds it necessary to reach the issues presented in this appeal, are that: (1) the questions raised by the present appeal are so insubstantial that further argument is unwarranted; and (2) to the extent the District Court correctly determined the underlying substantive issues in this case, the relief entered was well within the discretion vested in the court.

STATEMENT OF THE CASE

Proceedings Below. The complaint in this action, which was filed on July 13, 1988, includes four causes of action. The first, which is the only one involved in this appeal, alleges that the addition of new superior court judgeships in the State of Georgia requires preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, even though the method of electing those judges has not been changed.

The plaintiffs filed motions for a preliminary injunction and summary judgment on their Section 5 claims,

and on December 1, 1989, a three-judge district court, in a split decision, entered an order holding that all superior court judgeships added subsequent to November 1, 1964 (the effective date of Section 5 of the Voting Rights Act) required preclearance. The Honorable Phyllis Kravitch and B. Avant Edenfield comprised the majority of the court. The Honorable Dudley Bowen, Jr., dissented.

The District Court directed the defendants to complete a Section 5 submission to the Department of Justice. The State promptly did so, and on April 25, 1990, the Department of Justice issued its opinion. The Department objected to the addition of all new judgeships in any area of the State of Georgia where there was a significant black population.

The District Court then entered orders on May 29, 1990 and June 25, 1990 providing final relief on the Section 5 claim.

Statement of Facts. Since the State of Georgia was founded, the superior courts have been the State's trial courts of general jurisdiction. The superior courts have exclusive jurisdiction over equity cases, felony cases, domestic and custody cases, and certain other classes of cases. They also exercise a wide form of appellate and certiorari jurisdiction over inferior tribunals, administrative bodies, and local government bodies. *See* O.C.G.A. § 15-6-8.

Each individual superior court seat in Georgia is authorized by an act of the legislature. As of November 1, 1964, the effective date of Section 5 of the Voting Rights Act, the General Assembly had authorized 59 superior court judgeships throughout the State. From 1965 through

the 1988 session of the General Assembly, an additional 77 superior court judgeships were created. The addition of these judgeships came about solely because of the increased caseload of the courts, particularly in the number of felony cases.

Each of those additional judgeships was filled after enactment, and regular elections were then held at the expiration of the incumbents' terms. All of the new judgeships were elected pursuant to the same procedures that were used for the preexisting positions. Each superior court judgeship continued to be nominated by all the voters residing in the respective circuits and a majority of the vote was required for election.[1] *See* O.C.G.A. §§ 15-6-4.1; 21-2-135; 21-2-501. Each new judgeship was simply a replication of what had existed before.

From 1965 to 1988, no submission of any of these new judgeships was made under Section 5, either to the Department of Justice or to the District Court for the District of Columbia. It was the understanding of the State of Georgia that the addition of new judgeships under the circumstances presented did not constitute an "electoral change" which required preclearance. *Neither the plaintiffs, the Department of Justice, nor any other person suggested otherwise during this 24 year period.*

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[1] There were a few instances in which new circuits were created out of old circuits since November 1, 1964, but each of these changes has been precleared, and they have no bearing on this appeal. Nomination and election of judges became nonpartisan in 1983, which is also a precleared change that has no bearing on the present appeal.

The State of Georgia believed that preclearance was not required for the addition of new judgeships because there had been no change in the method of electing judges. Since each new judgeship was simply a duplication of what had existed before, minority voters could not conceivably have been disadvantaged in any way by the addition of these new judgeships. Neither this Court nor any other court had ever held that the mere addition of a new judgeship required separate preclearance where the judge was to be elected by mandatory state-wide laws that preexisted Section 5. The District Court here acknowledged this fact and noted that, "before the issuance of our December 1989 order, the question of whether the new judgeships were covered by Section 5 was in dispute." (App. 88, n. 1) Judge Bowen further elaborated on this point in his dissent:

> [I]n the laborious research which the parties and this Court have performed, there is no binding precedent that the mere increase in the number of judges in an existing, otherwise validly composed judicial circuit, is a change in a "standard, practice, or procedure with respect to voting."
>
> The majority believes that a duplication or other multiplication of the *status quo*, by the mere addition of a judgeship, is a covered change because of a perceived "potential for discrimination" therein. The proffered potential for discrimination is imaginary. This potential for discrimination (a) presumes the existence of factors which are not grounded in fact; and (b) presupposes that some novel and ingenious method might be crafted to accommodate the wishes of plaintiffs and their class whenever a new judgeship is needed. While it is true that only a potential for discrimination, not a discriminatory purpose or effect, must be shown,

> the acceptance of the genuineness of the potential for discrimination proffered by the plaintiffs in this case requires a degree of credulity which I cannot muster, even under the liberal construction principles of the Voting Rights Act. (App. 64-65)

When it was suggested in 1988 that statutes adding new judgeships in Georgia might require Section 5 preclearance, the State, out of an abundance of caution, submitted the 77 judgeships added from 1965 through 1988.[2] This submission was made to the Department of Justice on June 22, 1988. Immediately thereafter, on July 13, 1988, the plaintiffs chose to file their complaint and put before the District Court the question of whether the addition of new judges alone constituted "covered changes." The State therefore declined to pursue further the June 1988 submission until the District Court ruled on this issue. When the District Court held on December 1, 1989, in its 2-1 ruling, that covered changes were involved and preclearance was required, the State of Georgia completed its earlier submission.[3]

The undisputed evidence shows that there has been no discrimination in either the election or the appointment of superior court judges in the State of Georgia. While plaintiffs complain that the percentage of superior

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[2] In 1989 and 1990 together, an additional 11 superior court judgeships were authorized by the General Assembly. Ten of those positions have never been filed and remain vacant today on account of the present litigation.

[3] In the interim, the Department precleared 31 statutes creating new judgeships in those areas of the State that did not have a significant black population.

court judges who are black is less than the percentage of the general population that is black, that difference is due entirely to the fact that the percentage of qualified persons who are black is much less than the percentage of blacks in the general population.[4]

At the time of the District Court's order (and today), six of the 137 incumbent superior court judges were black (*i.e.*, 4.4 percent). This number *exceeds* the total percentage of black lawyers in the State of Georgia (three percent), and it significantly exceeds the percentage of lawyers who are black and who satisfy the minimum seven-year practice requirement for serving as a superior court judge.

The lower court did not find, nor could it have found, that the method of electing superior court judges had somehow discriminated against black judicial candidates in Georgia. To the contrary, there had been nine judicial elections in which black and white candidates had opposed one another at the time of the District Court's decision. These included a state-wide election for the Court of Appeals, several superior court elections, and several state court elections. *The black candidate won seven of these nine judicial elections.* In fourteen additional elections, black candidates for state and superior court judgeships had been elected without opposition. (In the most recent judicial elections in the State, which occurred on July 17, 1990, two more black state-wide candidates

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[4] The Georgia Constitution requires that superior court judges be members of the Bar for seven years or more. *See* Ga. Const. Art. VI, Sec. VII, Par. II(a). Plaintiffs have not alleged that this requirement is discriminatory.

were successful, one for the Court of Appeals, and one for the Supreme Court; each had white opposition.)

Nor could anyone rationally suggest that there has been racial discrimination in the appointment process, which is the route by which approximately 70 percent of the present superior court judges in Georgia initially took office. These appointments are made by the Governor upon the recommendation of the Judicial Nominating Commission (JNC). When there is a vacancy, the JNC publicizes that fact and receives applications from anyone who chooses to apply. The evidence in the record shows, without contradiction, that black lawyers who have applied for superior court positions have enjoyed a success rate approximately 50 percent *higher* than that of white applicants.

Notwithstanding the fact that the method of electing superior court judges remained unchanged, and notwithstanding the absence of any evidence of discrimination in the election or appointment of superior court judges in Georgia, the Department of Justice objected to the creation of every new judgeship in each circuit that had a significant black population. The Department's April 25, 1990, objection letter did not suggest that the mere addition of these judgeships was somehow racially discriminatory. Rather, the principal basis of the objection was the allegation that Georgia's state-wide majority vote requirement might be discriminatory. (App. 108-109) As a matter of fact, however, that requirement had been adopted *before* the effective date of Section 5, and it therefore had not been submitted to the Department of Justice for review, nor could it have been. The Department also appears to have questioned circuit-wide voting, but that,

too, is a practice that predates the November 1, 1964, Section 5 benchmark for determining what is a "changed" electoral practice. (App. 109)

The District Court's Relief. Based on the Department of Justice's April 25, 1990 letter, the District Court entered final relief on plaintiffs' motions. First, the court enjoined the upcoming 1990 elections, and all future elections, for any of the new judgeships that had not been precleared. Second, the court enjoined the State of Georgia from "activating," by appointment or election, any of the 10 new, but still unfilled, judgeships that were objected to that had been created in the 1989 and 1990 sessions of the General Assembly. Third, the court provided that all objected to judgeships that had been enacted from 1965 through 1988, which already had incumbent judges prior to the filing of plaintiffs' complaint and motion for injunctive relief, would become *vacated* and *cease to exist*, unless the State of Georgia is successful in obtaining preclearance in a judicial action filed in the District Court for the District of Columbia.[5] If the declaratory judgment preclearance action were unsuccessful, the 25 judgeships whose incumbents' terms end in 1992 would cease to exist at that time; the 23 judgeships whose incumbents' terms would otherwise have ended in 1990 would cease to exist 150 days after the conclusion of the declaratory judgment action. Finally, the District Court provided that

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[5] In order to satisfy this provision of the District Court's order, the State was required to file a complaint seeking judicial preclearance within 90 days of the District Court's June 25, 1990 order, or by September 23, 1990. Such an action has been filed. *See State of Georgia v. Thornburgh*, Civil Action No. 90-2065 (D.D.C., complaint filed August 24, 1990).

all incumbent judges could continue to hold their offices pending an appeal to this Court by the State of Georgia. (App. 89-90)

The State of Georgia's Appeal in Case No. 90-322. The State defendants, the appellees in the instant appeal, have filed a separate appeal to this Court in which they pursue the specific question which the District Court acknowledges to be "in dispute." (App. 88, n. 1) *See Georgia State Board of Elections v. Brooks,* Case No. 90-322 (U.S., docketed August 22, 1990). In that case, the State of Georgia asserts that the District Court erred in holding that Section 5 preclearance was required at all in this case, so that the judgment of the court should be reversed *in toto* for that reason. The State of Georgia contends there that preclearance was not required for any of the new judgeships at issue because the method of electing those judgeships was not changed in any way. Since the new judgeships were elected pursuant to the very practices mandated by Section 5 – *i.e.,* those practices that were in effect on November 1, 1964 or which have received subsequent preclearance – separate Section 5 preclearance should not be necessary.

As noted, Judge Bowen agreed with the contentions of the State of Georgia in his dissent on this issue. If this Court similarly agrees with the State of Georgia's contentions on appeal in Case No. 90-322, all issues in the present appeal would become moot. The present issues relate to questions of relief that would arise only if one first assumes that Section 5 preclearance is required.

ARGUMENT

I. ASSUMING THAT THE DISTRICT COURT WAS CORRECT IN HOLDING THAT A "COVERED CHANGE" OCCURRED MERELY BY THE ADDITION OF NEW SUPERIOR COURT JUDGESHIPS, WHICH WERE ELECTED PURSUANT TO PROCEDURES THAT WERE IN EFFECT PRIOR TO NOVEMBER 1, 1964, THE RELIEF PRESCRIBED BY THE DISTRICT COURT WAS WELL WITHIN THE COURT'S EQUITABLE DISCRETION.

A. The Remedy that Appellants Requested Would Be Of No Benefit to Minority Voters And, For That Reason Alone, the District Court's Refusal to Eliminate 48 Superior Court Judgeships Instanter Was Not Error.

The District Court here enjoined all future elections for unprecleared judgeships, including elections scheduled for 1990 for which qualifying had already occurred at the time of the court's May 29, 1990 order. The District Court also enjoined the State of Georgia from taking any action to fill, by election or appointment, those judgeships that were objected to, but had not yet been filled, which were enacted in 1989 and 1990. Appellants can take no issue with this very harsh relief.

Appellants' only quarrel is with the District Court's order providing that incumbent judges may continue in office pending the outcome of a Section 5 declaratory judgment action in the District of Columbia (if the latter remains necessary after this Court's decision in the State's appeal in Case No. 90-322). Appellants contend that the District Court erred in "permitting the judges to remain in office until the end of their terms," and that the District Court was required as a matter of law to declare "that the judgeships be immediately voided and vacated." (J.S. at 33-34, n. 13)

At the outset, it is questionable whether appellants have even preserved this argument for appeal. In the District Court, they acknowledged that the court had the discretion to allow the objected to judgeships to continue for some period of time, even without the State of Georgia pursuing a Section 5 preclearance action in the District of Columbia. Plaintiffs expressly stated that allowing incumbent judges to serve out their terms, through either 1990 or 1992, was "fully consistent with . . . Section 5 jurisprudence." (Plaintiffs' Brief in Opposition to Defendants' Motion for Rehearing or Reconsideration, at 1)

Assuming that appellants' present contention can be raised in this Court, however, it is clearly a contention that cannot be justified. It would be unprecedented to impose the kind of radical relief appellants insist on if such relief would not provide any benefit to the plaintiffs or any minority voter or potential candidate. Yet that is the very situation that exists here.

Nowhere have the plaintiffs been able to suggest how the immediate elimination of nearly half of the State's superior court judgeships, judgeships which have existed without objection for up to a quarter of a century, would advance minority voting rights. Eliminating these 48 judgeships would not remedy any alleged past discrimination, and the District Court's injunction against future elections, until there is preclearance, guarantees against even the most remote possibility of voting discrimination.

The need of all citizens of the State of Georgia, both black and white, to have a functioning judiciary is undisputed. There being no benefit to the extraordinary

injunction appellants seek, the tremendous disruption such relief would cause cannot possibly be justified.

B. None of The Past Decisions of This Court Support the Appellants' Extraordinary Request for Relief in This Appeal.

In the District Court, the plaintiffs initially agreed that that court had the discretion to allow incumbent superior court judges to serve out their terms, through either the end of 1990 or 1992, as the case may be. Appellants' complaint on appeal is with the District Court's modification of its order, which further permitted incumbent judges to continue in office pending resolution of the State of Georgia's Section 5 preclearance action in the District Court for the District of Columbia. Appellants' inconsistent positions cannot be reconciled. Having once admitted that incumbent judges could continue in office for up to two and one-half more years, even in the absence of any preclearance litigation in the District of Columbia, appellants are hard pressed to justify their present claim that the District Court was somehow duty bound as a matter of law to vacate all offices *instanter*.

The plaintiffs' appeal here seeks radical and unprecedented relief. Never before has this Court held that public officers, elected over the prior quarter of a century without any objection or complaint from the plaintiffs or the Department of Justice, should be eliminated from office, without any provision for their successors being elected, while the very question of Section 5 preclearance is being litigated in a declaratory judgment action. Allowing

incumbents to remain in office pending Section 5 preclearance litigation is customary, *see, e.g., City of Rome v. United States*, 446 U.S. 156 (1980), and there is no reason to deviate from the established practice here.

The principal cases relied upon by appellants, *Berry v. Doles*, 438 U.S. 190, 192-93 (1978) (per curiam); *Georgia v. United States*, 411 U.S. 526, 541 (1973)[6]; *Perkins v. Matthews*, 400 U.S. 379, 396 (1971); and *Allen v. State Board of Elections*, 393 U.S. 544 (1969), provide appellants with no support. These cases did not even involve this question. There was no indication in any of those decisions that the covered jurisdiction had any intention or desire to pursue judicial preclearance. At most, there was a possibility that the jurisdiction might seek administrative preclearance from the Attorney General. Even there, this Court held that that should be allowed before the District Court should consider any relief, other than simply enjoining future elections. *See, e.g., Berry v. Doles, supra*. Since this Court has indicated that a district court should normally stay its hand to allow a covered jurisdiction to seek preclearance by the Department of Justice, such deference surely should be given to proceedings in the District Court for the District of Columbia under circumstances such as those presented by this case.

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[6] In *Georgia v. United States*, the defendants were allowed to use a new reapportionment for the 1972 elections even though *prior* to that election the District Court had found it to be a covered change and it had been objected to. The Department of Justice's own regulations and comments acknowledge that district courts may allow unprecleared election changes to be used even prospectively. *See* 28 C.F.R. §51.18(c) and 52 Fed. Reg. 488-89 (1987).

Appellants put far too much weight on the existence of an administrative objection letter from the Department of Justice. They argue in their Jurisdictional Statement as if the Department's letter constitutes a definitive determination that the method of electing Georgia's superior court judges is, in fact, improper under Section 5. Appellants are incorrect in this regard.

To the contrary, a declaratory judgment before a three-judge court in the District of Columbia is the basic means for obtaining preclearance. *South Carolina v. Katzenbach*, 383 U.S. 301 (1965). Administrative preclearance by the Attorney General was engrafted on the statute late in the legislative process almost as an afterthought as the bill approached enactment. *Morris v. Gressette*, 432 U.S. 491, 503-04 (1977). It was understood that Attorney General preclearance would usually arise only in simple, noncontroversial cases. *Id.* The determination by the Attorney General here will receive no weight of any sort in the judicial preclearance action that is now pending in the District of Columbia. *See* 42 U.S.C. §1973c. That action is an entirely *de novo* one.

All of the factors that have been found relevant by this Court in its past decisions concerning Section 5 remedies weigh heavily in favor of allowing Georgia's incumbent superior court judges to remain in office pending litigation of the Section 5 claims. In *Allen v. State Board of Elections, supra*, for example, this Court refused to grant anything but prospective relief because the application of Section 5 to the facts of that case was an issue "subject to rational disagreement." 393 U.S. at 572. In the present case, as all three members of the District Court

below acknowledged, there is very legitimate and "rational disagreement" over whether the addition of new superior court judges constitutes a covered "change" where those judges are all elected by procedures that are consistent with, and required by, the Section 5 prohibition against using changed methods of election.[7]

Given these circumstances, the District Court's prohibition against future elections alone would have satisfied Section 5, even if incumbent judges were allowed to hold over indefinitely. That relief would have been identical to what was entered in another Section 5 case involving judges. *See Kirksey v. Allain*, Civil Action No. J85-0960(B) (S.D. Miss., April 3, May 28, and July 25, 1986). The District Court here went much further in requiring that the State of Georgia pursue judicial preclearance in order to allow incumbent judges to continue in office.

Perkins v. Matthews, supra, similarly supports the appellees' position here. In determining whether anything other than prospective injunctive relief should be entered in the absence of Section 5 preclearance, this Court noted that a district court should consider "whether it was reasonably clear at the time of the election that the changes were covered by § 5." 400 U.S. at

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[7] Appellants suggest that the question of preclearance was decided by this Court's summary affirmance in *Haith v. Martin*, 477 U.S. 901 (1986), but they misstate the Court's holding in *Haith*. *Haith* did not touch upon the question whether the mere addition of a new judgeship, *without any change in the method of election*, required separate preclearance. In *Haith*, the actual method of electing new judges had been changed, and those changes were enjoined pending Section 5 preclearance. *Haith v. Martin*, 618 F.Supp. 410, 414 (D.N.C. 1985).

396. If not, any relief should be limited accordingly. *Perkins* also endorsed the very procedure adopted by the District Court in this case:

> In certain circumstances, for example, it might be appropriate to enter an order affording local officials an opportunity to seek federal approval and ordering a new election only if local officials failed to do so or if the required federal approval was not forthcoming. 400 U.S. at 396-397.

This Court went on in *Perkins* to hold that the district court should be principally responsible for determining the proper remedy. *Id.* at 397. In making that determination, the trial court should consider all "other factors [that] may be relevant, such as the nature of the changes complained of." *Id.* at 396. All of the "other factors" in this case weigh heavily in favor of the appellees here. As noted above, the elimination of all incumbent judges *instanter* would not advance the cause of minority voters in any way. Of all the elections plaintiffs now ask this Court to void, there is not a single one in which plaintiffs suggest that a black candidate lost because of any allegation of discrimination. Black candidates have done very well in judicial elections, and the evidence is undisputed that blacks are fairly represented on Georgia's superior courts in proportion to the percentage of blacks who are members of the qualified pool of lawyers eligible to serve.

Furthermore, the plaintiffs here seek the actual *elimination* of the offices at issue, which is a form of relief so radical that it has never even been mentioned in previous decisions of this Court. In past decisions, "retroactive" relief was conceived of as a possibility where an election

might be set aside and then conducted under different procedures that were consistent with Section 5. Such relief would not have resulted in the elimination of any incumbent public offices. Rather, those offices would have continued in existence with the officeholders' successors simply chosen by the voters under a court-ordered election. The havoc that would be caused by eliminating the offices themselves, as appellants demand, weighs heavily against their claim.

Finally, in considering the Department of Justice's objection, one must necessarily conclude that the State of Georgia has an excellent chance of obtaining Section 5 preclearance in its declaratory judgment action in the District of Columbia, even in the event that the State were not successful in its appeal to this Court in Case No. 90-322. The Department's objection in this case is a striking and questionable departure from its past administrative decisions and from this Court's rulings. The addition of the judgeships at issue here cannot possibly be characterized as either "retrogressive" or "intentionally discriminatory," which would be required to justify an objection under Section 5. *Beer v. United States*, 425 U.S. 130 (1975). To the contrary, since each new judgeship was an exact replication of the preexisting judgeships in the respective circuits, and elections were conducted for new judgeships just as they had been for the preexisting ones, there was no conceivable decrease or change in minority voting strength. It is thus impossible as a matter of law to find the kind of "retrogression" of minority voting strength proscribed by Section 5. *Beer v. United States, supra.*

The Department's objection rests in substantial part on Georgia's mandatory majority vote statute, which was

passed and in effect before November 1, 1964. (App. 108-09) That statute, which requires majority voting in all elections for State officers, including superior court judges, is not even subject to Section 5 review because it preceded the statute's November 1, 1964 trigger date. In an apparent effort to buttress its unprecedented extension of Section 5 review to reach pre-November 1, 1964 laws, the Department suggested that this statute might violate the separate Section 2 of the Voting Rights Act, 42 U.S.C. §1973. (App. 109) As the Department of Justice has represented to this Court before, however, the recently amended Section 2 has nothing whatsoever to do with Section 5 review, which remains limited to a determination of the purpose and "retrogressive effect" of changes that have been made subsequent to November 1, 1964. *See* Reply Brief for the United States, *City of Lockhart v. United States*, Case No. 81-802 (U.S., filed October 1982).

The strength of the State of Georgia's claim for preclearance is also shown by the fact that the Department of Justice issued a ruling in the State of Alabama diametrically opposite to its decision here. In Alabama, where judges are elected exactly as they are in the State of Georgia, every single one of Alabama's new judgeships that were enacted since November 1, 1964 were recently precleared by the Attorney General. (*See* Letter dated April 27, 1987 from Department of Justice to David R. Boyd, Def. Ex. B to Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction.)

In light of all of these factors, which the District Court was obligated to consider, one cannot argue that the court erred in allowing the State of Georgia to seek

judicial preclearance while incumbent judges remained in office.

C. This Court Has Repeatedly Held That, In Fashioning Section 5 Relief, District Courts Must Recognize Legitimate Interests of the States, and Those Interests Here Require That the Judgeships at Issue Not be Terminated Instanter.

Appellants ignore the repeated holding of this Court that, in fashioning relief in a Section 5 case, a district court must always take into consideration the legitimate objectives of the State. Any injunction can be no broader than what is necessary to remedy any violation of the Act, and the articulated policies and objectives of the State must be respected and given effect wherever possible. *Upham v. Seamon*, 456 U.S. 37, 43 (1982); *McDaniel v. Sanchez*, 452 U.S. 130 (1981); *Wise v. Lipscomb*, 437 U.S. 535 (1978); *White v. Weiser*, 412 U.S. 783 (1973).

Here, it is undisputed that the State has had a real and compelling need for additional new superior court judgeships since November 1, 1964. Defendants introduced abundant evidence that eliminating those judgeships would be catastrophic for the criminal and civil justice systems in the State of Georgia. The appellants did not introduce one shred of contrary evidence.

In allowing incumbent judges to continue in office pending Section 5 preclearance litigation, while at the same time enjoining any future elections that have not been precleared, the court was merely following its duty to give some deference to the clear, legitimate policies of

the State of Georgia that have been unambiguously articulated by the General Assembly.

Nothing in the objection letter from the Department of Justice would suggest that the increase in the number of Georgia's judges was somehow improper or unnecessary. That being the case, the District Court was duty bound to devise an order that intruded into these acknowledged interests of the State as little as possible. *Upham v. Seamon, supra.*

CONCLUSION

For the foregoing reasons, appellees respectfully request that this Court either dismiss this appeal or affirm the District Court's order insofar as it relates to the issue of relief.

Respectfully submitted,

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